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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/772,231   | 01/29/2004  | Wolfram Schmid       | MB 383              | 2199             |
| 7590   | 11/10/2005  |                      |                     |                  |
| KLAUS J. BACH & ASSOCIATES<br>PATENT AND TRADEMARKS<br>4407 TWIN OAKS DRIVE<br>MURRYSVILLE, PA 15668 |             |                      | EXAMINER            | TRIEU, THAI BA   |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3748                |                  |

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/772,231             | SCHMID ET AL.       |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Thai-Ba Trieu          | 3748                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 September 2005.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1 and 7-11 is/are allowed.
- 6) Claim(s) 12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 September 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

This Office action is in response to the Amendment filed on September 08, 2005. Applicant's cooperation in correcting the informalities in the drawing and specification is appreciated. Applicant's cooperation in amending the claims to overcome the claim objections relating to informalities as well as indefinite claim language is also appreciated. Claim 1, 7, 9, 10, and 12 were amended, and claims 2-6 were cancelled.

### ***Error Corrections***

In the previous Office Action mailed on June 09, 2005, it appeared a typo error on Page 8, line 4 of.

The correction is made as following:

***"Regarding claim 20"*** is corrected as – ***Regarding claim 12 --***.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daudel et al. (Patent Number 6,216,459 B1), in view of Sumser et al. (Patent Number 5,943,864).***

Daudel discloses a method for operating an internal combustion engine (6) having:

an exhaust system with an air intake duct (5) and an exhaust duct (7A, 7B) (See Figure 1),

a turbocharger with exhaust gas turbine (8) disposed said exhaust gas duct (7A, 7B) so as be driven by the exhaust gas the internal combustion and a compressor (1, 19) disposed the air intake duct (5) and connected to said turbine (8) so as to be driven thereby (See Figure 1),

a valve (14) disposed in communication with said exhaust duct (35, 36) with said exhaust duct (7A, 7B) upstream of said exhaust gas turbine (8) (See Figure 1), and

a bypass (15) connected said valve (14) and bypassing said turbine for discharging exhaust gas from exhaust duct (7A, 7B) upstream of said exhaust gas turbine (8) (See Figure 1).

However, Daudel fails to disclose the structural details of the control valve.

Sumser teaches that it is conventional in the turbocharged internal combustion engine art, to utilize said valve including a valve housing (22) with a valve body (21) movably disposed in said valve housing (22) and having first and second different exhaust gas flow control openings (19, 20), said valve body being adjustable between first position, in which said first gas flow control opening (19) communication with said exhaust gas duct, a second position in which said second gas flow control opening (20) communication said exhaust duct and a blocking position in which exhaust gas flow

through said valve (15) is blocked, the valve being movable to a different for the released of exhaust gases in the engine deriving mode and the engine braking mode (See Figure 1, Column 3, lines 36-67, Columns 4-5, lines 1-67, and Column 6, lines 1-5).

It would has been obvious to one having ordinary skill in the art at that time the invention was made, to have utilized the structural details of the control valve, as taught by Sumser, to improve the efficiency of Daudel device.

#### ***Allowable Subject Matter***

Claims 1 and 7-11 are allowed.

#### ***Response to Arguments***

Applicant's amendment filed on September 08, 2005 has been fully considered.

Since applicant failed to traverse the rejection of claim 12 based on the reference to Daudel et al. (Patent Number 6,216,459 B1), in view of Sumser et al. (Patent Number 5,943,864), it is presumed that applicant has acquiesced the rejection.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Stiermann (DE 102 22 219 A1) discloses a two-stage turbocharged internal combustion engine having feedback control element, engine braking shut-off element,

control element for varying exhaust gas applied to turbines implemented as a rotary valve.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai-Ba Trieu whose telephone number is (571) 272-4867. The examiner can normally be reached on Monday - Thursday (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TTB  
November 03, 2005



Thai-Ba Trieu  
Primary Examiner  
Art Unit 3748



Approved for entry  
TTB  
11/03/05

1/2

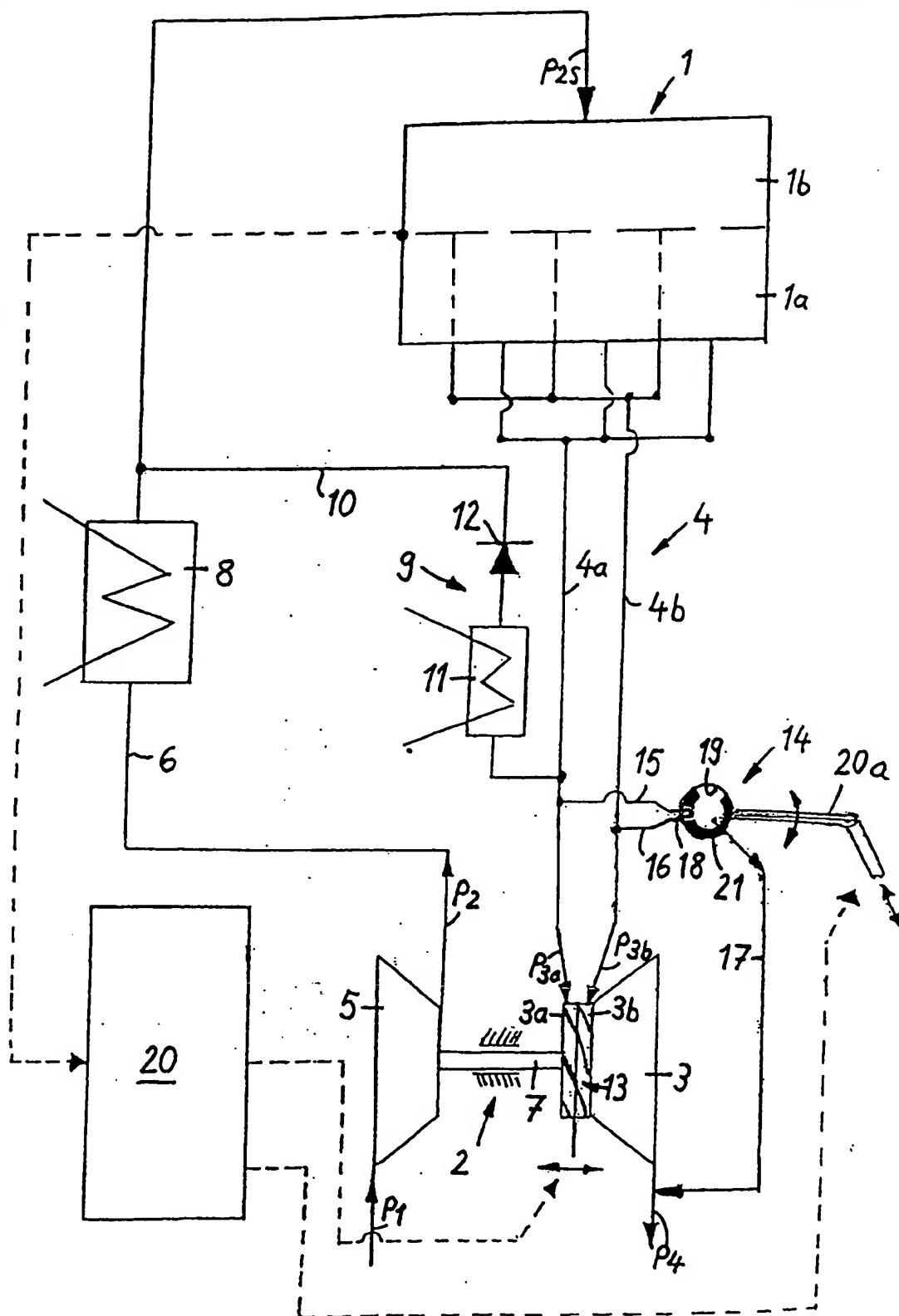


Fig. 1